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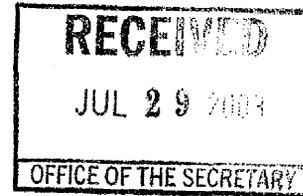
Mail: P.O. BOX 13167
AUSTIN, TEXAS 78711-3167

Phone: (512) 305-8300
Facsimile: (512) 305-8310

Texas State Securities Board

208 E. 10th Street, 5th Floor
Austin, Texas 78701-2407
www.ssb.state.tx.us

July 28, 2003



Jonathan G. Katz, Secretary
U.S. Securities and Exchange Commission
450 5th Street, NW
Washington, D.C. 20549-0609

VIA FACSIMILE AND
OVERNIGHT MAIL

RE: Concept Release: Rating Agencies and the Use of Credit Ratings under the Federal Securities Laws; Release Nos. **33-8236**; 34-47972; IC-26066; File No. **S7-12-03**

Dear Mr. Katz:

This letter is submitted in response to the above-referenced concept release ("Concept Release"), developed by the U. S. Securities and Exchange Commission ("SEC") following a report to Congress regarding the regulation and function of credit rating agencies in the operation of the securities markets. In light of concerns raised by certain members of Congress about the reliability of the SEC's designation process for a nationally recognized statistical rating organization ("NRSRO"), we applaud your efforts in developing these concepts. We appreciate the opportunity to comment on certain aspects of the Concept Release, as detailed below.

A. Alternatives to the NRSRO Designation:

We do not believe the SEC should respond to criticisms of the current designation procedures by eliminating the NRSRO designation from Commission rules. While there are ample ways to improve the process, doing away with the designation entirely does not appear to be the appropriate response. The idea that broker-dealers could use internally-developed credit ratings to determine capital charges seems highly susceptible to abuse. Likewise, it would appear unreasonably conflicted for the self regulatory organizations to set standards for broker-dealers to use in determining rating categories for net capital purposes.

In regard to Rule 2a-7 under the Investment Company Act of 1940, the suggestion to eliminate the "objective test" (wherein ratings issued by NRSROs are used to establish minimum quality standards) also seems to be ill-advised. The combination of this objective test with the "subjective test" (credit analysis performed by the adviser to the money market fund) provides an important complementary rating structure under Rule 2a-7.

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As discussed below, we would prefer to **see** improvements in the designation procedures and heightened accountability for the NRSROs as the appropriate **response** to the very valid concerns which have been raised.

B. Recognition Criteria:

The Concept Release states that certain commenters in the most recent (1994-1997) comment process on NRSROs indicated that the recognition criteria impose barriers to entry into the business of acting as a credit rating agency and that the current recognition procedure is not sufficiently transparent. We agree on both counts and support the idea of developing supplemental criteria that would be used to evaluate ratings quality applicable to both rating agencies performing traditional fundamental credit analysis and those primarily reliant on statistical models. Opening **the** NRSRO designation process to agencies that cover a limited sector of the debt market, **as well as** to those **who** restrict their activity to a limited geographic area, would enhance competition and **make** more rating opinions available to investors.

The concept that recognition of NRSROs should occur through Commission action (rather than through staff no-action letters) has enormous appeal. **This** would provide publication of applications for NRSRO designation and encourage public comment on the credibility and reliability of the applicant's ratings. We **agree** that the process could be improved by the Commission's development **of** supplemental criteria that would be used to evaluate ratings quality applicable to both traditional and statistical analysis models. In addition, this procedural change would go far to address concerns regarding conflicts of interest and alleged anticompetitive, abusive, and unfair practices since the process would be under such enhanced public scrutiny.

In addition, it appears reasonable for the Commission to establish a time period of 90 or **120** days from receipt of required information to serve as a goal for action on NRSRO applications. This affords greater certainty to an applicant as to when a ruling will be made on its application and it could **be** used **as** a mechanism for providing public notice for those **who wish** to comment.

C. Examination and Oversight of NRSROs:

The Concept **Release** states that each of the current NRSROs is registered **as** an investment adviser under the Investment Advisers Act of 1940 and that the Commission's 1997 proposal would have required registration. We believe a better approach would be to condition NRSRO recognition on a rating agency's agreeing **to** maintain specified records relating to its rating business, including those relating to rating decisions. Also, the Commission should condition recognition on **an** NRSRO's **agreement** to submit to **regular** inspections **and** examinations to determine compliance with the appropriate regulatory regime. In addition, the Commission should condition recognition on agreement of NRSROs to provide Commission staff with access to all personnel and books and **records**, and to cooperate with investigations.

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These conditions are preferred to requiring annual certifications that the NRSROs will continue to **comply** with all of the NRSRO criteria. Finally, it seems wasteful to solicit public comment annually on the performance of each NRSRO; rather, let public comment **be** reflected by market demand. Those **NRSROs** that do not perform to the satisfaction of the public will be weeded out by their competition.

D. Conflicts of Interest:

We are **most** pleased **with** the approach taken in the Concept Release regarding conflicts of interest. Potential conflicts of interest appear to be **the** greatest area of criticism of the current structure and **we support** your ideas for the Commission to develop a new approach, including **NRSRO** recognition conditioned on a rating agency's:

- Developing and implementing procedures to address issuer influence;
- Developing and implementing procedures to address subscriber influence;
- Developing and implementing procedures to address issues regarding ancillary fee-based services;
- Having adequate resources to reduce dependence on individual issuers and subscribers; and
- Deriving less **a** percentage of its revenues from a single source to help assure that the NRSRO operates independently of **economic pressures** from individual customers.

We trust that carefully **crafted** rules regarding these issues can prevent the conflicts that have riled the accounting industry and are subject to current review by the Commission. The notion that **a** public service can be performed in relation to a customer while simultaneously performing private services for **that** customer **is** patently short-sighted. We encourage your efforts to avoid these conflicts in the realm of NRSROs.

E. Alleged Anticompetitive, Abusive, and Unfair Practices:

The practices of "notching" and "encouraging" payment for unsolicited ratings **need to be** stopped. The SEC should identify specific anti-competitive practices that NRSROs would agree to prohibit **as a** condition to NRSRO recognition. We are not knowledgeable of the extent of such practices, but **we** are confident that you can identify **and** prohibit them. We fully support your efforts to do so.

F. Information Flow:

With **regard** to information flow, **we** support the continuation **of** NRSRO recognition **being** conditioned on a rating agency's agreeing to public dissemination of its ratings on a widespread **basis** at no cost. **The** Internet has become a ready and relatively cost-free manner of accomplishing such dissemination. We are concerned, however, with the concept of requiring too detailed information regarding the **key bases** of, and assumptions underlying rating decisions of **NRSROs**. While general,

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categorical disclosures relative to credit analysis is appropriate, requiring client-specific disclosures could raise serious contractual and First Amendment concerns.

We agree that requiring periodic performance information disclosure would be beneficial to investors. We support the concept of conditioning NRSRO recognition on a rating agency's implementation of procedures to assure periodic performance disclosure. Similarly, we foresee an important public benefit to requiring NRSROs to provide public notice when they cease rating an issuer. Persons who rely on the ratings of an **NRSRO** should be apprised of the termination of the relationship in order that they may **assess** the factors leading to the cessation, as they may impact future investment decisions relative to the issuer.

Thank you very much for the opportunity to comment on the Concept Release. If you have any questions regarding the comments contained in this letter, please do not hesitate to contact me or David Weaver, **General Counsel**, at (5 12) 305-8306.

Very truly yours,



DENISE VOIGT CRAWFORD
Securities Commissioner

DVC/dw

cc: Christine A. Bruenn, President, NASAA
Ralph Lambiase, President-Elect, NASAA
S. Anthony Taggart, Director, Division of Securities, Utah Department of Commerce
John Lynch, Interim Executive Director/Controller, NASAA
John Veator, Deputy General Counsel, NASAA